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EXAMINER

GREENE, DANA D

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,218

Applicant(s)

BABASHAN, BRUCE

Examiner

Dana D. Greene

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8, 9, 12, and 14 stand rejected under 35 U.S.C. §102(e) as being anticipated by Nissila et al. (US 6,745,069 B2, hereinafter "Nissila").

Nissila is considered to disclose:

a housing (see col. 1, ln. 15-25, Nissila). The disclosed casing is considered to anticipate the claimed housing because both carry and protect the control electronics of the device;

a microcontroller having a heart rate algorithm programmed therein disposed within said housing (see col. 6, ln. 10-21, Nissila). The disclosed microprocessor is considered to anticipate the claimed microcontroller because both control electronics are provided with the necessary system and application software;

a heart rate input device communicating with said microcontroller (see col. 5, ln. 63 – col. 6, ln. 21, Nissila). The disclosed signal receiver is considered to anticipate the claimed input device because both transmit heart beat information

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to the control electronics to control and coordinate the operation of different parts of the monitor;

a heart rate color display field disposed upon said housing, displaying one of a plurality of colors homogenously and uniformly over said color display field according to signals received from said microcontroller and according to heart rate input processed by said microcontroller from said heart rate input device (see col. 3, ln. 48-67, Nissila). The disclosed display is considered to anticipate the claimed color display because both employ different colors to signify different ranges. For example, Nissila teaches a display that may comprise a yellow LED to indicate that the measured variable is below the target zone or a green LED to indicate that the measured variable is within the target zone.

With reference to claims 2 and 9, Nissila is considered to disclose:

a heart rate monitor including a user variable input device disposed upon said housing and communicating with said microcontroller (see col. 6, ln. 10-21, Nissila). The disclosed microprocessor is considered to anticipate the claimed microcontroller because both control electronics are provided with the necessary communication system and application software;

Referring to claims 3 and 12, Nissila is considered to disclose:

a heart rate monitor, wherein said user variable input device is configured for at least one user variable selected from the group consisting of age, gender, height, weight, and fitness activity level (see col. 2, ln. 65 – col. 3, ln. 7, Nissila). The disclosed variable of exercise time and/or speed and /or distance traveled is considered to anticipate the claimed variables selected from the claimed group;

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With reference to claim 8, Nissila is considered to disclose:

a case configured for wearing upon the wrist of a user (see abstract, Nissila). The disclosed invention relates to an electronic wrist-worn device, such as a heart rate monitor with a casing comprising a bottom surface to be placed against the wrist and a top surface with a display;

said case further including a wrist strap extending therefrom (see col. 2, ln. 37-42, Nissila). The disclosed wristband 302 is considered to anticipate the claimed wrist strap because both allow the device to be fastened around the user's wrist;

a microcontroller having a heart rate algorithm programmed therein, disposed within said case (see col. 6, ln. 10-21, Nissila). The disclosed microprocessor is considered to anticipate the claimed microcontroller because both control electronics are provided with the necessary system and application software;

a heart rate input device communicating with said microcontroller (see col. 5, ln. 63 – col. 6, ln. 21, Nissila). The disclosed signal receiver is considered to anticipate the claimed input device because both transmit heart beat information to the control electronics to control and coordinate the operation of different parts of the monitor;

a heart rate color display field disposed upon said case, displaying one of a plurality of colors homogeneously and uniformly over said color display field according to signals received from said microcontroller and according to heart rate input processed by said microcontroller from said heart rate input device

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(see col. 3, ln. 48-67, Nissila). The disclosed display is considered to anticipate the claimed color display because both employ different colors to signify different ranges. For example, Nissila teaches a display that may comprise a yellow LED to indicate that the measured variable is below the target zone or a green LED to indicate that the measured variable is within the target zone.

Referring to claim 14, Nissila is considered to disclose:

a user variable digital display disposed over said color display field (see col. 3, ln. 48-56, Nissila). The disclosed display comprises LEDs of different colors that can be used to indicate that the measured variable is below a target zone.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 and 10-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nissila in view of Narayanaswami (US 6,556,222 B1, hereinafter "Narayanaswami"). Nissila is considered to disclose the claimed invention as discussed above under the anticipatory rejection except for the claimed rotating bezel. However, Narayanaswami teaches the rotating bezel (see col. 8, ln. 25-41, Narayanaswami). It would have been obvious to one having ordinary skill in the art to combine the teachings of Nissila with the

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rotation of the bezel to generate electrical signals for the purpose of surrounding the display area and simultaneously extending on all sides to encircle the display area. More specifically, the rotating bezel generally defines the circumference of the case or housing.

Claims 7, 13, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nissila over Abbondanza (US 5,527,239, hereinafter "Abbondanza"). Nissila is considered to disclose the claimed invention as discussed above, under the anticipatory rejection, except for the claimed use of the Karvonen formula. However, Abbondanza is considered to disclose the claimed Karvonen formula (see col. 2, ln. 32-37, Abbondanza). It would have been obvious to one having ordinary skill in the art to combine the teachings of Nissila with the Karvonen Formula of Abbondanza for the purpose of determining optimum heart rate.

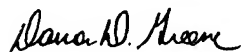
With reference to claims 6, 15-18, and 20, Nissila is considered to disclose the claimed invention as discussed above, except for the claimed stand extending upwardly from a stationary exercise machine (see abstract, col. 3, ln. 35-50, and fig. 1, Abbondanza). It would have been obvious to one having ordinary skill in the art to combine the teachings of Nissila with the exercise machine of Abbondanza for the purpose of displaying a user's heart rate range or zone while they make use of the machine. In this connection, the hear rate of the person using the machine can be received and transmitted to the microcontroller for processing the signal.

Conclusion

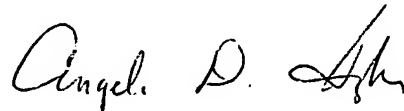
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dana D. Greene whose telephone number is (571) 272-7138. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dana D. Greene



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